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September 9, 1999

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Gary Hotvedt, Esq.
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505

Re: Petition by ICG Telecom Group, Inc. for Arbitration of an Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996
Docket No. 99-00377

Dear Gary:

As we discussed on the telephone, you have asked that ICG provide you with a more detailed explanation of ICG's position on each contested issue. These statements of ICG's position will be incorporated into the issues matrix you are preparing for this proceeding.

Please, therefore, insert the following responses from ICG into the matrix.

Issue 1. Yes. The TRA has previously ruled on this issue in the NEXTLINK arbitration. (Docket 98-00123.) ICG seeks the same relief. Since the NEXTLINK hearing, moreover, the FCC has issued a Declaratory Ruling concerning local calls to ISPs. In the Ruling, the FCC explicitly recognized that state commissions may continue to require compensation for ISP traffic in the absence of any federal compensation rule. Until the FCC acts, if it ever does, ICG will receive no compensation for handling these calls unless the TRA orders it.

Issue 3. Although this issue has been settled in other states, it has not been settled in Tennessee.

BellSouth is required under the Act and under FCC orders to provide UNEs for packet-switched services, including unbundled frame relay packet switching. To ensure that the prices charged to ICG for these capabilities are TELRIC-based, it is necessary that all packet-switched capabilities be available as UNEs.

ICG, through discovery, will obtain BellSouth's cost data and, after studying that data, file testimony proposing TELRIC-based rates for these capabilities.

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ICG has not, in any sense, broadened this issue but agrees that the issue, as now worded, better conveys the meaning of how BellSouth is to "make available" these services.

Issue 4. Yes. Both parties agree that extended loops should be made available. BellSouth, however, insists that the EELs be offered through a "Professional Services Agreement" outside the jurisdiction of the TRA and at whatever rate BellSouth decides to charge. ICG believes, that, like any other network element, an EEL must be offered at a TELRIC-based rate approved by this Authority.

In light of the Supreme Court's decision in *Iowa v. FCC*, the TRA has authority under both federal and state law to order BellSouth to provide extended loops at TELRIC-based rates. After reviewing BellSouth's cost studies, ICG will recommend appropriate rates for UNEs.

Issue 5. Yes. Pending the establishment of a Tennessee-specific plan which includes performance standards and liquidated damages, ICG recommends that the TRA adopt in the interim the performance standards and penalties recently adopted by the Texas Public Utilities Commission. The Texas Plan adequately address each of the performance related issues raised in this arbitration.

Having argued at length that liquidated damages are appropriate for inclusion in BellSouth's tariffs and Contract Service Arrangements, BellSouth cannot seriously now contend that the TRA has no authority to consider such penalties or that liquidated damages are not a useful method of ensuring compliance with contracts and tariffs.

In Texas, Southwest Bell and the other parties came to an agreement on performance measures and penalties. The proceedings were closely monitored by staff members from both the FCC and the U.S. Department of Justice. It seems likely that the Texas plan may become a blueprint for other states and, possibly, the FCC.

On the one hand, BellSouth argues that performance measures and damages are inappropriate and illegal. On the other hand, BellSouth has acknowledged that the company is presently working on a proposal that is similar to the Texas plan and which includes performance measures and liquidated damages. BellSouth, however, has said it will not agree to the company's own plan in any state until after that state commission approves BellSouth's 271 application. Brief of Sept. 7, 1999, p. 10. If performance standards and damages are needed to make competition workable, the TRA should adopt them in this proceeding. Otherwise, the interconnection agreement will not succeed.

Issue 6. Yes. One purpose of this proceeding is to fix cost-based rates for UNEs. To the extent BellSouth saves money through provisioning service in high volumes or for extended

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terms, these savings must be passed through to ICG. Once BellSouth provides its Tennessee cost studies, ICG can determine the appropriate amount of such discounts and, based on these findings, propose appropriate discounts at the hearing.

Issue 7. FCC Rule 47 C.F.R. § 51.711(a)(3) specifically addresses this issue. According to the rule, ICG is entitled to compensation at BellSouth's "tandem interconnection rate" whether or not ICG itself uses a tandem switch to serve that area. BellSouth's position simply ignores the rule.


Once ICG receives BellSouth's cost studies, ICG will propose an appropriate termination rate.

Issue 11. Yes. To avoid blockages, ICG is willing to commit to pay for BellSouth's network improvements that are not fully utilized. BellSouth has no principled reason to refuse ICG's proposal and, in fact, has agreed to binding forecasts in other interconnection proceedings. See, *eg.* Interconnection Agreement Between BellSouth and KMC Telecom, Section 20.4 "Binding Traffic Forecasts," Feb. 24, 1997. In the alternative, ICG would propose that, if the parties cannot agree on a forecast, they could submit the matter to the TRA for decision under T.C.A. §65-4-114 (authorizing the TRA to order "any reasonable extension" of existing facilities where "reasonable and practical" and the utility is reasonably protected from economic loss).

Issues 19-26. Yes. As explained in Issue 5, ICG believes that the TRA should adopt the performance standards and penalties recently approved by the Texas Public Utilities Commission. The most comprehensive state plan yet adopted, the Texas plan adequately addresses each of the performance-related issues in this docket. In the long-run, however, Tennessee should adopt its own state-specific plan and apply it prospectively to all pending interconnection agreements.

Very truly yours,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By: 
Henry Walker

HW/nl
c: Guy Hicks, counsel for BellSouth